IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

CRL.A.No. 587 of 1999()

AGAINST THE JUDGMENT DT. 29.6.99 IN CC.467/97 OF THE JUDL. 1ST CLASS MAGISTRATE COURT, PATHANAMTHITTA.
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APPELLANT: COMPLAINANT

SANTHOSH THOMAS, THURUTHIYIL HOUSE,
EDAYARANMULA MURI, ARANMULA.

BY ADV. SRI.S.MUHAMMED HANEEFF

RESPONDENT/ ACCUSED

ROFINA JOE, PALAMATTATHU HOUSE,
JOE VILLA, EDAYARANMULA MURI,
ARANMULA

BY ADV. SRI.K.GEORGE
BY PUBLIC PROSECUTOR SRI.DILIP. S.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.A.NO.587 of 1999-C

DATED THIS THE 20th JUNE 2007

JUDGMENT

The appellant is the complainant in C.C.No. 467/97 with respect to the offence under Section 138 of the Negotiable Instrument Act. The complainant's case is that towards discharge of liability the accused issued the impugned cheque dated 14-5-1997 drawn on Central Bank of India, Arattupuzha Branch and when it was presented for encashment, the same got bounced for want of funds on 20-5-1997 . Lawyer notice was sent demanding payment on 28-5-1997 which was received by the accused on 30-7-1997. No reply was sent nor was any amount paid.

2. The evidence adduced in the matter consisted of the testimony of PWs.1 and 2 and Exts.P1 to P7. The accused herself got examined as DW1 and Ext.D1 marked. When questioned under Section 313 Cr.P.C., it is stated that she had borrowed a sum of Rs.10,000/- on 3-5-1995 from the complainant and he has paid only Rs.9,000/- after deducting 1000/- as interest. She paid back Rs.9,000/- on 14th May 1997.

She also paid a sum of Rs.600/- towards interest as demanded. The complainant again demanded Rs.3,000/-. The same was also paid. Again the complainant demanded Rs.6,000/- and then she refused to pay.

3. PW1 has testified with respect to the borrowal, execution of the cheque and has also proved the documents as to the presenting of the cheque, sending of lawyer notice etc. The court below has mainly relied on the statement of Pw1 in his deposition that the money was paid to the accused on 3-1-1997 whereas PW2, the Bank Manager, who was examined at the instance of the complainant to prove the fact that the impugned cheque was dishonoured for want of funds in the account of the accused, has stated that Ext.D1 cheque book was issued only on 28-2-1997. The above was brought out during the cross examination of PW2. Hence, the case set up by the complainant was sought to be disbelieved as according to his version the amount was paid on 3-1-1997 and the cheque was also received on 3-1-1997 whereas the cheque book itself was issued only on 28—2-1997. Pw1 was recalled on application, apparently in order to prove Ext.P7 reply notice. When examined after

recalling, he also stated that the amount was borrowed on 1—3-1997 but the court declined to treat the same as a clarification. It is also observed in the judgment that the signature in the vakalath, the complaint and in the deposition and in the power of attorney (sic.) differed. It is pointed out that no power of attorney has been produced. It is pointed out that the above case of difference in signature of the complainant has no relevance at all. I find that the decision of the courts below calls for reconsideration.

4. Hence, the order of the court below is set aside. The matter is remitted back to the trial court for fresh disposal. The court below is directed to reconsider the matter afresh after permitting the parties to adduce any further evidence, if they so desire. The Crl.appeal is disposed of accordingly.

The parties shall appear before the court below on 25-7-2007.

ks. **K.R.UDAYABHANU, JUDGE**

K.R.UDAYABHANU, J

CRL.A.NO.587 of 1999-C

JUDGMENT

20-6--2007